



March 20, 2002

Ms. Ashley D. Fourn  
Assistant County attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2002-1390

Dear Ms. Fourn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159966.

The Tarrant County Purchasing Department (the "department") received a request for all information regarding a certain boot camp facility for a specified period of time. You state that a portion of the responsive information will be released to the requestor. Although you do not claim any exceptions on behalf of the department, you advise us that release of the requested information may implicate the proprietary interests of several third parties, Acupuncture Healing Arts Institute; Tarrant Community Outreach, Incorporated; Correctional Services Corporation; Arlington Acupuncture & Herb Institute; TCMNRS; Family Assessment Consultation & Therapy Services; CALAB; Lamar Services; and Correctional Services Corporation (collectively, "third parties"). You further advise us, and the submitted documents reflect, that you notified the third parties of the request for information so they could respond directly to this office with their arguments regarding the confidentiality of the proposals. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have reviewed the submitted information.

As of the date of this letter, however, the third parties have not submitted comments to this office explaining why the submitted information must be withheld. Because the third parties have not provided us with any comments and you do not have an opinion on the matter, we have no basis to conclude that the submitted information is excepted from disclosure under section 552.110. *See* Gov't Code § 552.110(a), (b) (to prevent disclosure of commercial or

financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

We note, however, that the submitted information contains motor vehicle information that is excepted from disclosure under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the vehicle identification numbers we have marked under section 552.130.

We further note that the submitted information contains a social security number. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code.<sup>1</sup> A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

We also note that some of the information at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). In releasing the remaining information, the department must comply with copyright law.

In sum, the department must withhold the information we have marked under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

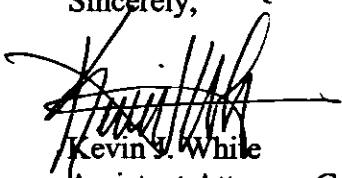
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kevin V. White  
Assistant Attorney General  
Open Records Division

KJW/seg

Ref: ID# 159966

Enc. Submitted documents

c: Mr. Mark Haney  
Law Offices of Jeffrey H. Kobs  
115 West 2<sup>nd</sup> Street, Suite 204  
Fort Worth, Texas 76102  
(w/o enclosures)

Mr. Khairi Murbarak  
Acupuncture Healing Arts Institute  
5801 Curzon Avenue #2K  
Fort Worth, Texas 76107  
(w/o enclosures)

Mr. David Cudmore  
Tarrant Community Outreach, Inc.  
711 East Lamar Boulevard #205  
Arlington, Texas 76011  
(w/o enclosures)

Mr. James Slattery  
Correctional Services Corp.  
1819 Main Street #1000  
Sarasota, Florida 34236  
(w/o enclosures)

Mr. Mark Lee  
Arlington Acupuncture & Herb Institute  
2481 Forest Park Boulevard  
Fort Worth, Texas 76110  
(w/o enclosures)

Ms. Donna Martin  
TCMHMRS  
P.O. Box 2603  
Fort Worth, Texas 76113  
(w/o enclosures)

Mr. Dick Brockman  
Family Assessment Consultation & Therapy Services  
5801 Curzon Avenue #2B  
Fort Worth, Texas 76107  
(w/o enclosures)

Ms. Carol Bell  
CALAB  
600 Six Flags Drive #650  
Arlington, Texas 76011  
(w/o enclosures)

Ms. Cindee Pinchot  
Lamar Services  
P.O. Box 88  
Noble, Oklahoma 73068  
(w/o enclosures)